

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUDY E. JOHANNSEN

Claimant

VS.

HTL TRUCK LINE, INC.

Respondent

AND

TRAVELERS INSURANCE COMPANY

Insurance Carrier

Docket No. 1,000,152

ORDER

Claimant appeals the June 5, 2002 Preliminary Hearing Order of Administrative Law Judge Bruce E. Moore. Claimant was denied additional treatment for her left carpal tunnel syndrome after the Administrative Law Judge found that claimant's carpal tunnel condition did not arise out of and in the course of her employment as it relates to the truck accident of October 2, 1999. The Administrative Law Judge found, instead, claimant's condition arose as a result of her truck driving duties for respondent, for which claimant had not provided timely notice of accident.

Claimant contends her right carpal tunnel syndrome developed as a result of the truck accident on October 2, 1999. She alleges the left carpal tunnel syndrome symptoms then developed as a result of overuse of the non-operated extremity while claimant was recovering from surgery to the right upper extremity.

Respondent contends that the carpal tunnel syndrome did not arise out of the truck accident, but instead is a separate series of accidents resulting from claimant's truck driving activities. Respondent then goes on to argue that a separate notice of accident must be provided pursuant to K.S.A. 44-520 (Furse 1993) for the series of accidents, which are separate and distinct from the truck accident of October 2, 1999.

ISSUES

Claimant presents the following issues for consideration by the Board from the appeal of the June 5, 2002 Preliminary Hearing Order of Administrative Law Judge Moore:

- "(1) Compensability of the accident of October 2, 1999 resulting in bilateral carpal tunnel condition.
- "(2) Whether claimant gave timely notice of the accident.
- "(3) Whether the Administrative Law Judge exceeded his jurisdiction in denying compensability."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeal Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant, a truck driver for sixteen and a half years, had worked for this respondent for thirteen months when, on October 2, 1999, she was involved in a motor vehicle accident. At that time, claimant was co-driving with her husband. Claimant's husband was actually driving the truck on the date of accident, with claimant asleep in the passenger compartment. The single vehicle accident left claimant with injuries to her right shoulder and left ankle.

Claimant ultimately came under the care of orthopedic surgeon Jay Stanley Jones, M.D., in Wichita, Kansas, on October 18, 1999. Claimant was diagnosed with a rotator cuff tear in her right shoulder. Surgery was performed to repair the tear on October 29, 1999. Dr. Jones continued to treat claimant, placing her in a sling and, later, ordering physical therapy.

On April 17, 2000, claimant complained to Dr. Jones that her right hand was going to sleep. She indicated that reading a newspaper and driving her car caused her hand to go numb. Nerve conduction studies verified that claimant had mild to moderate carpal tunnel syndrome on the right side.

By August 2000, claimant's right shoulder problems were beginning to reappear. She was having pain over her AC joint. Claimant continued having carpal tunnel symptoms in her right hand. Dr. Jones injected the AC joint, and claimant ultimately underwent a second surgery involving a debridement of the AC joint and resection of the distal clavicle.

Claimant continued to complain of pain in her right hand and wrist, with the hand falling asleep at times. The increased numbness in her hand was especially bad at night.

On July 2, 2001, claimant, for the first time, advised Dr. Jones that she was having symptoms in her left wrist as well. Dr. Jones and claimant had already discussed the possible surgery to release her right carpal tunnel symptoms, and this was performed on August 6, 2001. Claimant testified that the carpal tunnel surgery was successful in that she was able to sleep at night without the hand going numb. However, she did indicate a weakness of grip in the right upper extremity.

Claimant's left carpal tunnel condition continued. Dr. Jones recommended an EMG for diagnostic purposes. In his November 26, 2001 letter to claimant's attorney, he noted that the nerve conduction studies performed on the left side did indicate carpal tunnel syndrome, which he felt could be caused by overuse due to the injury to the right side. However, in the letter, he does not specify whether the injury to the right side was the right shoulder or the right carpal tunnel condition.

In order to clarify the situation, the Administrative Law Judge referred claimant to orthopedic surgeon Sergio Delgado, M.D., for an independent medical examination on February 19, 2002. Dr. Delgado examined claimant, went through her history and was provided copies of a multitude of medical documents associated with claimant's shoulder and carpal tunnel conditions. After reviewing all the medical information and examining claimant, Dr. Delgado came to the conclusion that claimant's carpal tunnel syndrome on both the right and the left were not related to the injuries sustained during the October 2, 1999 truck accident. He did, however, find that her condition could be related to her truck driving occupation, mentioning, in particular, the continuous tight grip of the steering wheel while driving and vibrations which occur naturally in the truck as the probable causative factors for her carpal tunnel syndrome. In this way, he did relate claimant's condition to her employment, but did not relate it to the October 2, 1999 accident.

Dr. Jones' medical records, which were attached to the preliminary hearing transcript, reached no conclusion regarding the cause of claimant's right carpal tunnel syndrome. He does not state whether it is related to the truck accident or related to any other employment duties claimant performed for respondent. He does relate the left carpal tunnel to claimant's right side, but does not specify whether the right side includes the shoulder, the carpal tunnel condition or both.

In the Preliminary Hearing Order, the Administrative Law Judge noted the dilemma created by Dr. Delgado's specific findings with regard to causation and Dr. Jones' less-than-specific comments about claimant's conditions. The Administrative Law Judge found claimant's carpal tunnel syndrome, while being related to her employment, was not related to the motor vehicle accident. He went on to find that this involved two separate accidental injuries. The Administrative Law Judge merely echoes the finding made by

Dr. Delgado in his report wherein he states "it is my opinion that it should be treated as a separate work related injury" when talking about claimant's carpal tunnel syndrome.

The Administrative Law Judge noted that while the dates of the two separate accidents may be the same or very close to one another, they did comprise two separate independent accidents. The obligations of the Workers Compensation Act would, therefore, apply separately to each.

K.S.A. 44-520 (Furse 1993) requires that notice of accident be given to the employer within 10 days of the date of accident. The notification time is expanded to 75 days if the claimant is able to show that the failure to notify under K.S.A. 44-520 (Furse 1993) was "due to just cause"

Claimant argues in her brief that the statute requires notice of accident and not notice of injury. Claimant is correct in this legal statement. However, that line of cases applies when an accident leads to a multitude of different injuries which all stem from the same accidental injury. In this instance, Dr. Delgado has separated claimant's shoulder problems, which originated from the truck accident, from the carpal tunnel syndrome, which originated from claimant's driving activities not related to the truck accident. These represent two separate accidental injuries for which separate notice of accident must be given under K.S.A. 44-520 (Furse 1993).

The Board acknowledges that if the right carpal tunnel syndrome did originate from the truck accident, then the notice of accident provided to respondent would include any and all injuries resulting from that situation. Additionally, if claimant's left carpal tunnel syndrome then developed while overcompensating for the right carpal tunnel syndrome, then the notice provided regarding the truck accident would also encompass any reasonable and natural consequences resulting in the left carpal tunnel syndrome condition. However, that is not the case in this instance.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 1999 Supp. 44-501 and K.S.A. 1999 Supp. 44-508(g). In this instance, the more credible and persuasive evidence is that of Dr. Delgado, who clearly states that claimant's carpal tunnel condition is not related to the truck accident. Therefore, the notice provided to respondent regarding the October 2, 1999 truck accident would not be sufficient to encompass a separate series of accidents suffered by claimant while driving respondent's truck.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated June 5, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2002.

BOARD MEMBER

c: Beth Regier Foerster, Attorney for Claimant
Jeffrey E. King, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation